

DEPARTMENT OF STATE REVENUE

01-20170117R.ODR

**Final Order Denying Refund: 01-20170117R
Income Tax
For The Years 2011 and 2012**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Individual did not produce documentation supporting his position that the tax assessments on his adjusted gross income for tax years 2011 and 2012 were incorrect. Therefore, the Department's initial denial of the claim for refund was correct.

ISSUE

I. Income Tax–Refund.

Authority: IC § 6-3-4-1; IC § 6-8.1-5-1; IC § 6-8.1-8-4; IC § 6-8.1-9-1; IC § 6-8.1-10-1; IC § 6-8.1-10-3; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Taxpayer protests the denial of a claimed tax refund.

STATEMENT OF FACTS

Taxpayer is an individual. Taxpayer did not file Indiana tax returns for the 2011 and 2012 tax years ("Tax Years"). The Indiana Department of Revenue ("Department") determined that there was an outstanding balance for the Tax Years and issued proposed assessments with penalties. Taxpayer did not respond to the assessments and the Department issued demand notices for payment in March of 2016. The Department hired a collection agency to secure payment of the liabilities. In October of 2016, Taxpayer filed a claim for refund of income tax for the Tax Years which was denied by the Department because Taxpayer did not provide income tax returns for the Tax Years establishing that the liabilities were incorrect. An administrative hearing was held and this Final Order Denying Refund results. Further facts will be supplied as required.

I. Income Tax–Refund.

DISCUSSION

Taxpayer protests the denial of claim for refund for the 2011 and 2012 tax years. Specifically, Taxpayer protests that he should be refunded the amounts removed from his bank account by a collection agency on behalf of the Department. Underlying that position is the fact that Taxpayer did not file 2011 and 2012 Indiana income tax returns which resulted in best information available ("BIA") assessments issued by the Department. Taxpayer believes that, since he did not file federal returns for those years and since Indiana's IT-40 individual income tax returns have instructions to start with federal income, he was not able to honestly file Indiana tax returns. Taxpayer states that his employer did withhold income tax as reflected on his W-2s for the Tax Years. Taxpayer believes that the W-2 withholdings are sufficient to satisfy his Indiana income tax liabilities for the Tax Years. The Department did not agree that the W-2 withholding constituted the filing of a return and so issued the BIA assessments. Those BIA assessments were more than was withheld by Taxpayer's employer for both years.

The Department notes that the Indiana Supreme Court has stated, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

The procedure for granting or denying a claim for refund is presented in IC§ 6-8.1-9-1, stating in relevant parts:

- (a) If a person has paid more tax than the person determines is legally due for a particular taxable period, the

person may file a claim for a refund with the department.

Except as provided in subsections (j) and (k), in order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:

- (1) The due date of the return.
- (2) The date of payment.

For purposes of this section, the due date for a return filed for the state gross retail or use tax, the gasoline tax, the special fuel tax, the motor carrier fuel tax, the oil inspection fee, or the petroleum severance tax is the end of the calendar year which contains the taxable period for which the return is filed. *The claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund.*

(b) *After considering the claim and all evidence relevant to the claim, the department shall issue a decision on the claim, stating the part, if any, of the refund allowed and containing a statement of the reasons for any part of the refund that is denied.* The department shall mail a copy of the decision to the person that filed the claim. If the person disagrees with a part of the decision on the claim, the person may file a protest and request a hearing with the department. If the department allows the full amount of the refund claim, a warrant for the payment of the claim is sufficient notice of the decision.
(*Emphasis added*).

Taxpayer believes that he is entitled to a refund of taxes collected by a collection agency on behalf of the Department. Also, Taxpayer protests that the amount withheld by his employer and the amount removed from his bank account by the collection agency are significantly more than would have originally been due for the Tax Years.

The requirement to file an Indiana tax return is governed by IC § 6-3-4-1, which states in relevant parts:

Returns with respect to taxes imposed by this act shall be made by the following:

- (1) *Every resident individual having for the taxable year gross income in an amount greater than the modifications provided under [IC 6-3-1-3.5\(a\)\(3\)](#) and [IC 6-3-1-3.5\(a\)\(4\)](#).*
- (2) *Every nonresident individual having for the taxable year any gross income from sources within the state of Indiana, except for a team member (as defined in [IC 6-3-2-2.7](#)) who is covered by a composite return filed under [IC 6-3-2-2.7](#).*
(*Emphasis added*).

Thus, residents of the state of Indiana with "gross income in an amount greater than the modifications provided under IC § 6-3-1-3.5(a)(3) and IC § 6-3-1-3.5(a)(4)" are required to file a tax return. When filing a claim for refund, a taxpayer must state the amount and show why they are entitled to a refund from the Department.

Also of relevance is IC § 6-8.1-10-3, which states, in relevant parts:

- (a) *If a person fails to file a return on or before the due date, the department shall send him a notice, by United States mail, stating that he has thirty (30) days from the date the notice is mailed to file the return. If the person does not file the return within the thirty (30) day period, the department may prepare a return for him, based on the best information available to the department. The department prepared return is prima facie correct.*
- (b) *If the department prepares a person's return under this section, the person is subject to a penalty of twenty percent (20 [percent]) of the unpaid tax.* In the absence of fraud, the penalty imposed under this section is in place of and not in addition to the penalties imposed under any other section.
(*Emphasis added*).

In addition, IC § 6-8.1-5-1 states in relevant portions:

- ...
- (b) *If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.*
 - (c) *The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid.* The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.
- ...

(*Emphasis added*).

Further, the collection of unpaid taxes is administrated by IC § 6-8.1-8-4, which states:

(a) When the department collects a judgment arising from a tax warrant, it may proceed in the same manner that any debt due the state is collected, except as provided in this chapter. *The department may employ special counsel or contract with a collection agency for the collection of a delinquent tax plus interest, penalties, collection fees, sheriff's costs, clerk's costs, and reasonable fees established under subsection (b) if:*

(1) *an unsatisfied warrant has been issued by the department; or*

(2) *the department received a tax payment by check or other instrument drawn upon a financial institution, and the check or other instrument was not honored by that institution.*

(b) The commissioner and the budget agency shall set the fee that the special counsel or collection agency will receive and payment of the fee shall be made after a claim for that fee has been approved by the department.

(c) The fees become due and owing by the taxpayer upon the filing of an amended warrant with the circuit court clerk adding the fee authorized by subsection (b) to the amount of the judgment lien under section 2 of this chapter.

(*Emphasis added*).

Taxpayer is an individual with "gross income in an amount greater than the modifications provided under IC § 6-3-1-3.5(a)(3) and IC § 6-3-1-3.5(a)(4)" that is required to file tax returns but chose to not file tax returns. Pursuant to IC § 6-8.1-10-3, "if the person does not file the return within the thirty (30) day period, the department may prepare a return for him, based on the best information available to the department. The department prepared return is *prima facie* correct." Because Taxpayer did not file a tax return for the tax years in question, the Department provided Taxpayer with assessments with the "best information available." The Department's calculations resulted in an outstanding balance on Taxpayer's account.

As a result of Taxpayer's failure to file returns for the Tax Years, and of Taxpayer's failure to pay the proposed assessments followed by his failure to pay the demand notices, after filing a tax warrant with Taxpayer's county clerk the Department was compelled to employ a collection agency pursuant to IC § 6-8.1-8-4, which states "[t]he department may employ special counsel or contract with a collection agency for the collection of a delinquent tax plus interest, penalties, collection fees, sheriff's costs, clerk's costs, and reasonable fees . . . if an unsatisfied warrant has been issued by the department." Therefore, the Department followed the provisions of IC § 6-8.1-8-4 when it hired the collection agency.

After the collection agency removed the amount at issue from Taxpayer's bank account, Taxpayer filed the instant protest. In the course of the protest process, Taxpayer provided worksheets showing how he calculated Indiana income tax due for the Tax Years. Taxpayer states that he is entitled to a refund and relies on these calculations to show payments towards the outstanding balance for the 2011 and 2012 tax years. According to IC § 6-8.1-9-1, "[t]he claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund." The Department sent assessments to Taxpayer showing that there was an outstanding balance on Taxpayer's account. Taxpayer contends that he has made payments upon the outstanding balance but has no support other than the worksheets which fail to disprove the *prima facie* assessments issued by the Department due to Taxpayer's failure to file tax returns.

Also, Taxpayer states that the original amounts he would have owed for the Tax Years have now been increased much more than was due at the original filing times. The Department notes that every step in the process could have been avoided had Taxpayer opted to file returns for the Tax Years or had opted to pay the proposed assessments or the demand notices. Instead, Taxpayer chose not to file returns or to pay the liabilities issued by the Department. In his protest letter and in the administrative hearing, Taxpayer stated that he tried to pay the assessments but was told that he had to file returns, which he did not want to do. The Department's records show that Taxpayer could have paid the assessments without filing a return, but that Taxpayer wanted the Department to waive penalty and interest. The Department then informed Taxpayer that he would need to file returns before it would consider waiving penalties. Interest may not be waived as provided by IC § 6-8.1-10-1(e). The result of Taxpayer's chain of decisions resulted in increased cost to the Department, which included the creation of returns for Taxpayer, as provided by IC § 6-8.1-10-3. Also, penalties and interest were incurred due to Taxpayer's decisions. Then, the Department was forced to turn the matter over to a collection agency, which added to the costs incurred by the Department. At each step, the Department followed the proper statutory procedures. Taxpayer has not shown that he is entitled to a refund. Therefore, Taxpayer's refund was correctly denied.

FINDING

Taxpayer's protest is denied.

Posted: 11/29/2017 by Legislative Services Agency
An [html](#) version of this document.